UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,132	02/16/2001	Sheila Sellers	109.0009	5619

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EXAMINER
BORLINGHAUS, JASON M

ART UNIT	PAPER NUMBER
3628	

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/788,132	SELLERS ET AL.
	Examiner	Art Unit	
	Jason M. Borlinghaus	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>06 September 2005</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-13* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-13* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1-3, 5, 6-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Dhar (US PG Pub. 2002/0040339 A1) in view of Myers (TA Myers &

Co. *Real Estate Problem Loans: Workout Strategies and Procedures. Dow Jones-Irwin.*

1990. pp. 5 – 30) and Litton (Litton, Larry B. *The Return of Loss Mitigation. Mortgage*

Banking. Washington, DC. vol. 57, iss. 8. May 1997. pp. 60-65).

Regarding Claim 1, Dhar discloses a system comprising:

- a network of personal computers (clients) connected into a network

  administered by a central server computer (web server). ("The web server

  is <u>in network communication </u>with the Internet. The web server provides

  the Internet interface for the client's web browser. Specifically, the web

server hosts dynamic web pages and provides an <u>interface for clients to interact with the application server</u> and the database server." - see p. 1, para. 0017);

- each personal computer in the network including a network interface for transmitting borrower inputs to, and receiving outputs from, the server computer. ("Each request from the client proceeds through the web server, which <u>transmits the required information to the application server</u>." – see p. 1, para. 0018. "Assuming that the borrower scores high enough to qualify for one or more of the instant offer loans, the system compiles a list of instant offers for that consumer and displays them on a web page for the consumer's review." – see p. 9, para. 0104);

- each personal computer in the network further including display screens for receiving inputs from, and providing outputs to, a borrower, including inputs and outputs relating to a proposed loan. ("…<u>a website interface</u> providing a credit application form for a consumer to complete, the website interface providing a field for the consumer to select a category of loan offerings.." – see Claim 1. A display screen would be inherent in collecting input through a website interface. "Assuming that the borrower scores high enough to qualify for one or more of the instant offer loans, the system compiles a list of instant offers for that consumer and <u>displays them on a web page</u> for the consumer's review." – see p. 9, para. 0104);

- the central server computer (application server) having a central processing unit (workflow/decision engine) that runs automatic loan decision analysis software wherein the analysis software analyzes information relating to the loan and other information to determine whether to automatically approve the proposed loan. ("When the lending institution receives the application data, the back-end loan workflow engine is activated instantly to perform automatic decision analysis for credit scoring, ratio analysis and other credit checks to meet the selection criteria of each financial institution." – see p. 4, para. 0041. "The workflow engine accepts web-based loan applications, processes the loan applications programmatically, and renders a loan decision within seconds." – see abstract. "...renders an programmatic loan decision without human intervention..." – see abstract – establishing that the decision is automatic); and

- the central server computer transmitting to the financially troubled borrower, automatically over the network, automatic approval of the proposed loan if certain predefined parameters (checklists) are met and, if the predefined parameters are not met, providing further instructions to the financially troubled borrower. ("The workflow engine uses checklists to evaluate loan applications." – see abstract. "If the bank rejects the application, a rejection notice is sent to the applicant." – see p. 9, para. 0100. "...renders an programmatic loan decision without human

intervention..." – see abstract – establishing that the decision is

automatic).

Dhar does not teach a system comprising:

- inputs from and outputs to, <u>a financially troubled borrower</u>, including inputs

   and outputs relating to a <u>proposed loss mitigation workout</u>;

- automatic <u>loan workout decision</u> analysis software wherein the analysis

   software analyzes information relating to <u>a preexisting loan whose terms</u>

   <u>are not being met by the financially troubled borrower</u> and other

   information <u>relating to why the troubled borrower is financially troubled to</u>

   <u>determine whether to automatically approve the proposed loss mitigation</u>

   <u>loan workout;</u> and

- automatic approval of the <u>proposed loss mitigation loan workout</u>.

Myers discloses a system comprising:

- inputs from and outputs to, a financially troubled borrower, including inputs

   and outputs relating to a proposed loan workout;

- loan workout decision analysis wherein the analysis analyzes information

   relating to a preexisting loan whose terms are not being met by the

   financially troubled borrower and other information relating to why the

   troubled borrower is financially troubled to determine whether to approve

   the proposed loan workout; and

- approval of the proposed loan workout. (see Uniform Approach to Loan

    Workouts, pp. 5 – 30, in which Myers establishes the inputs, outputs,

    analysis and decision process, and implementation for loan workouts).

Litton discloses a system comprising:

- inputs from and outputs to, a financially troubled borrower, including inputs

    and outputs relating to a proposed loss mitigation workout. ("Recognizing

    the lack of available technology to support loss-mitigation efforts, in 1995

    Litton began developing proprietary software, RADAR, and implemented it

    in 1996. The system automates the process and prepares a complete

    financial analysis based on given assumptions...The system interfaces

    with data sources that provide current property values so that calculations

    will consider the most likely sales price and marketing time should the

    property go to foreclosure and become owned real estate. The system

    also interfaces with credit bureaus, property inspection companies and

    title information sources." – establishing receiving inputs and inherently

    generating outputs);

- automatic loan workout decision analysis software wherein the analysis

    software analyzes information relating to a preexisting loan whose terms

    are not being met by the financially troubled borrower and other

    information relating to why the troubled borrower is financially troubled to

    determine whether to approve the proposed loss mitigation workout.

    (supra); and

■ approval of the proposed loss mitigation workout. (supra).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to have modified Dhar by incorporating the established loan

workout analysis, as disclosed by Myers, and the loss mitigation analysis, as disclosed

by Litton, into the automated loan decision analysis software and workflow (decision)

engine, as disclosed by Dhar, to provide a faster and automated system through which

to run loss mitigation workouts, and, as disclosed by Dhar, produce an automatic

decision.

Furthermore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have automated these processes, since it has been

held that broadly providing a mechanical or automatic means to replace manual activity

that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120

USPQ 192.

Regarding Claim 2, Dhar discloses a system, wherein the personal computers

are connected into the network using an Internet connection. ("The web server is <u>in</u>

<u>network communication with the Internet</u>. The web server provides the Internet interface

for the client's web browser. Specifically, the web server hosts dynamic web pages and

provides an interface for clients to interact with the application server and the database

server." - see p. 1, para. 0017).

Regarding Claim 3, Dhar discloses a system, wherein the network interface is

web-based. ("The web server is in network communication with the Internet. The web

server provides the Internet interface for the client's web browser. Specifically, the <u>web</u>

server hosts dynamic web pages and provides an interface for clients to interact with

the application server and the database server." - see p. 1, para. 0017).

Regarding Claim 5, Dhar discloses a system, wherein if the user inputs fail to

satisfy predetermined guidelines (checklists), the user receives a message informing

the user that the system cannot be used. ("Rejection notice sent to applicant" – see

figure 7, 114, 116, 118 and 120).

Regarding Claims 6 – 8 and 10, further method claims would have been

obvious from system claims rejected above, Claims 1 – 3 and 5, respectively, and are

therefore rejected using the same art and rationale.

Regarding Claim 11, further apparatus claim would have been obvious from

system claim rejected above, Claim 1, and is therefore rejected using the same art and

rationale.

Claims 4, 9 and 12 - 13 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Dhar, Myers and Litton, as in Claim 1, 6 and 11 above, in further view

of Fletcher (US Patent 6,112,190).

Regarding Claim 4, neither Dhar, Myers nor Litton teach a system, wherein:

- the user selects a workout type among a menu of predefined workout
  types.

Fletcher discloses a system wherein:

- the user utilizes selects a analysis type among a menu of predefined
  analysis types (pulldown menu – see figure 14).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to have modified the automated loss mitigation loan workout

system, as disclosed by Dhar, Myers and Litton, in combination, to provide a menu of

predefined analysis types for selection among, as disclosed by Fletcher, to utilize a

common and standard software feature to create an easier to utilize graphic user

interface.

Regarding Claim 9, further method claim would have been obvious from system

claim rejected above, Claim 4, and is therefore rejected using the same art and

rationale.

Regarding Claim 12, further apparatus claim would have been obvious from

system claim rejected above, Claim 4, and is therefore rejected using the same art and

rationale.

Regarding Claim 13, Dahr does not teach a medium <u>wherein a selected workout</u>

<u>type is a Repay/Forbear workout type, a Borrower Assistance Program workout type, or</u>

<u>a Loan Modification workout type.</u>

Myers discloses a Repay/Forbear workout type (payment modification, removal

of borrower: foreclosure – see pp. 18 – 23) and a Loan Modification workout type

(payment modification, loan modifications, extensions of loan maturity – see pp. 18 –

21).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to have modified Dhar, Myers and Litton, in combination, by

incorporating a menu of predefined analysis types, as was done by Fletcher, to utilize a

common and standard software feature to create an easier to utilize graphic user

interface, and to populate that menu with common workout types such as a

Repay/Forbear and Loan Modification workout types, as discussed by Myers, to make it

easy and simple to access common workout types.

Response to Arguments

Applicant's arguments filed 9/06/05 have been fully considered but they are not

persuasive.

Regarding rejection under In re Venner (120 USPQ 192), the applicant argues

that In re Venner was inappropriately applied to establish the obviousness of

automation of a known process. The current examiner respectfully disagrees.

As the applicant states, in In re Venner "all the elements were considered old"

(see Applicant's Arguments, p. 11, lines 1 – 3) and all the component elements existed

in "the prior art." (see Applicant's Arguments, p. 10, line 20 – p. 11, line 1). In the instant

case, all the elements are considered old and exist in the prior art. The process of

conducting a loan workout is old and well known in the art, and utilizing a computer

system to automate a process is old and well known in the art. Therefore, it would have

been obvious, as with In re Venner, to automate a known process with a computer

system.

What distinguishes the applicant's invention from the cotton gin is that the

applicant is broadly automating a known method utilizing a known and existing

technology. The applicant is not claiming specific features or structures that make the

automation possible, nor is the applicant providing any innovation to the method for

which automation is sought. If Eli Whitney merely claimed "A mechanized system for

separating cotton fiber from cotton seed with an input for raw material, an output for a

finished product and a power source," with nothing more, he would have been rejected

under In re Venner. However, Eli Whitney claimed the mechanized features, structure

and construction of the machine, itself – the gears, the cogs, the belts and the inter-

relationship of the parts – that made the process itself possible.

Regarding rejection under 103 (a), the applicant argues that Dhar in view of

Myers and Litton, neither separate nor in combination, support the examiner's rejection

(see Applicant's Arguments, pp. 7 – 8). The current examiner respectfully disagrees.

As established by In re Venner, it would have been obvious to one of ordinary

skill in the art at the time the invention was made to have automated the method, since

it has been held that broadly providing a mechanical or automatic means to replace

manual activity that accomplishes the same result involves only routine skill in the art.

Dhar is the automation of the formerly manual loan processing methodology.

(see Dhar, p. 1, paragraphs 2 – 3). Dhar possesses the same structure as the applicant

– networked computers administered by a central server computer; receiving inputs to,

and receiving outputs from, a central server computer; each networked computer

possessing display screens for inputs and outputs. (supra). But most importantly, Dhar

has a central server computer that runs automatic loan decision analysis software that

processes the borrower's input and automatically ("without human intervention") renders a loan decision. (see Dhar, abstract).

While Dhar discloses an automated loan processing system which considers "credit scoring, ratio analysis and other credit checks to meet the selection criteria of each financial institution" (see Dhar, p. 4, paragraph 41), Myers discusses the manual loan workout processing methodology and Litton discusses a software system to enable specialists to run loss mitigation scenarios.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Dhar by incorporating the established loan workout analysis, as disclosed by Myers, and the loss mitigation analysis, as disclosed by Litton, into the automated loan decision analysis software and workflow (decision) engine, as disclosed by Dhar, to provide a faster and automated system through which to run loss mitigation workouts, and, as disclosed by Dhar, produce an automatic decision.

Additionally, applicant argues that neither Dhar, Myers nor Litton, condition their "automatic approval of a proposed loss mitigation loan workout if certain predefined parameters are met." (see Applicant's Arguments, p. 9, lines 1 – 3). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the automation of the loss mitigation loan workout would require the incorporation of "predefined parameters" for the rendering of a decision in the same manner that Dhar utilizes "checklists created by the workflow designer" (see abstract) so that the

automated decision process would have some basis by which to judge incoming

proposals.

Additionally, application argues that neither Dhar, Myers nor Litton, analyses both

"information relating to a pre-existing loan whose terms are not being met by the

financially troubled borrower and other information relating to why the troubled borrower

is financially troubled to determine whether to automatically approve the proposed loss

mitigation workout." (see Applicant's Arguments, p. 10, lines 3 – 8). However, Myers

states that "when early warning signs indicate a potential loan problem exists, the asset

manager should immediately begin gathering pertinent information" (see Myers, p. 15)

and "The information-gathering process should be geared towards providing data that

will result in the selection of an action plan that is most appropriate for the particular

distressed situation." (see Myers, p. 15). Such information is gathered due to a pre-

existing loan whose terms are not being met by the financially troubled borrower ("loan

default") (see Myers, p. 18) and, therefore, such pertinent information gathered in the

information gathering process, as disclosed by Myers, would include information relating

to the pre-existing loan and other information relating to why the troubled borrower is

financially troubled.

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made that the automation of the loss mitigation loan workout, as

previously explained, would require input of "information relating to a pre-existing loan

whose terms are not being met by the financially troubled borrower and other

information relating to why the troubled borrower is financially troubled relating to the

pre-existing loan and other information relating to why the troubled borrower is

financially troubled", as disclosed by Myers, for the development of an automated

decision concerning the proposed mitigation loss workout.

Furthermore, application argues that neither Dhar, Myers nor Litton, in view of

Fletcher, fails to establish "a loss mitigation loan workout type among a menu of

predefined loss mitigation loan workout types". (see Applicant's Arguments, p. 11, line

16 – p. 12, line 6). The current examiner respectfully disagrees.

Neither Dhar, Myers, Litton nor Fletcher disclose "a loss mitigation loan workout

type among a menu of predefined loss mitigation loan workout types". However,

Fletcher does disclose the selection of a workout (analysis) type from among a menu

(drop-down menu) of predefined workout (analysis) types. (see Fletcher, figure 14). It

would have been obvious to one of ordinary skill in the art at the time the invention was

made to have modified the automated loss mitigation loan workout system, as disclosed

by Dhar, Myers and Litton, in combination, to provide a menu of predefined workout

types for selection among, as disclosed by Fletcher, to utilize a common and standard

software feature to create an easier to utilize graphic user interface.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

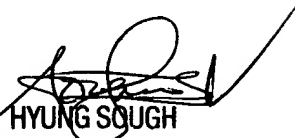MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571) 272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HYUNG SOUGH
SUPERVISORY PATENT EXAMINER
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